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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,884	08/01/2003	Dennis L. Clapper	ROHO 8326C1	3045

1688 7590 09/03/2004

POLSTER, LIEDER, WOODRUFF & LUCCHESI  
12412 POWERSCOURT DRIVE SUITE 200  
ST. LOUIS, MO 63131-3615

EXAMINER

BROWN, PETER R

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/632,884

Applicant(s)

CLAPPER, DENNIS L.

Examiner

Peter R. Brown

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,623,080. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations in the claims of the application are met by the claims of the patent.

Claims 1-14 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe ('875) in view of Smith et al.

Graebe (Figures 1,17,25) shows an inflatable support assembly similar to that claimed, including a resilient base 13,15, and a plurality of inflation zones both along a centerline for support of an ischial area of a user and along lateral sides of the base. Note that column 9, lines 27-29 discloses that the plurality of zones shown in figure 25 may be separately inflated, wherein the cells 74 are

interconnected to one another by an airflow path utilizing channels therebetween *in a pattern*, but which together are independently inflated from the other zones.

Smith et al discloses an inflatable support cushion that includes an external air source, pressure-sensing means, a pressure regulating means, and a plurality of valves to control the inflation and deflation of the various cells.

In view of these disclosures, it would have been well within the level of skill in the art to have either utilized the inflation system as suggested by Smith et al for the inflatable support of Graebe, wherein an air source would be provided on the wheelchair, or alternatively, to have modified the cushion cell assembly of Smith et al in the manner suggested by Graebe, wherein the seat cushion includes different inflation zones for customized support and comfort for an occupant.

Regarding claims 8,9 and 11-14, the material of the cushion and type of support is considered a matter of design choice.

In regards to claim 6, while the cells of Graebe would appear to meet the size requirements in the claim, such is considered a matter of design choice and mechanical expediency, as simply changing the size of the cells is not considered a patentable distinction.

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Graebe ('875) in view of Smith et al., as applied to the claims above, and further in view of Graebe et al ('410).

Graebe et al (col. 9, lines 39-49) teaches the use of an inflatable, multiple zone seat assembly for use in a truck, wherein an air source associated with the truck is utilized. In view of this suggestion, to have utilized the seat support structure of Graebe ('875) and Smith et al in a truck environment, would have been obvious to one with ordinary skill in the art. As set forth above, the material of the seat base is considered a matter of design choice.

Regarding claims 20 and 21, to have utilized a slide valve for controlling the air pressure in and between the zones of Graebe ('875), would have been an obvious modification to one with ordinary skill in the art, as such is also taught by the patent to Graebe et al ('410). The specific pressure within the cells is considered a matter of design choice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter R. Brown whose telephone number is 703-308-2103. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.


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Should you have questions on access to the Private PAIR system, contact the

Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Peter R. Brown  
Primary Examiner  
Art Unit 3636

prb  
September 1, 2004